

AGREEMENT
BETWEEN
TOWN OF EAST HAMPTON, CONNECTICUT
AND
FUSS & O'NEILL, INC.
FOR
PROFESSIONAL SERVICES
BROWNFIELD ENVIRONMENTAL SERVICES

THIS AGREEMENT, made and entered into this 4th day of June, 2014 by and between the Town of East Hampton, Connecticut, which hereafter may act through its East Hampton Brownfields Redevelopment Agency, and which shall be duly authorized so to act, hereinafter called the Town, and Fuss & O'Neill, Inc., with offices in Manchester, Connecticut, hereinafter called the Engineer.

WITNESSETH, in consideration of the mutual promises herein contained, the parties hereto agree, each with each other, as follows:

ARTICLE 1 - EMPLOYMENT OF ENGINEER

1.1 General

The Town hereby employs the Engineer and the Engineer hereby accepts employment to provide engineering and environmental services related to implementation of the Town's Brownfields Program.

The Engineer will serve as the Town's professional representative on those phases of the project to which this Agreement applies and will consult with and advise the Town during the performance of its services.

1.2 Project Understanding

The Town of East Hampton has an ongoing Brownfields program and seeks professional engineering and environmental services to support the program.

ARTICLE 2 - SCOPE OF SERVICES

2.1 Evaluate the Existing Groundwater Condition within the Village Center

The initial task will be to acquire and review information on the Village Center. The objective will be to compile data relative to locations where there are known groundwater impacts and to identify potential sources of contamination.

Information compiled above will be reviewed to develop a conceptual model pertaining to suspected continuing sources of contamination to groundwater. Suspected source locations will be plotted on available mapping of the Village Center. Well locations and



any existing relevant environmental data will also be depicted on the project map. These data along with knowledge of preferred groundwater flow direction, subsurface geology, and other fate and transport factors will be evaluated to develop a list of suspect potential continuing sources. The hypothesized conceptual release model will be described in a narrative of a Quality Assurance Project Plan (QAPP) Addendum along with supporting data summary tables and maps.

Recommendations for key locations to collect samples of groundwater at the suspected source areas will be provided in the QAPP-Addendum. The recommendations will also include a description of how the samples will be collected given the accessibility and budget constraints. We will prioritize collection of samples from any identified existing accessible wells. If existing wells are not available, we will propose locations to install wells such as on Town-owned property or in the Town right-of-way adjacent to roads or sidewalks.

We will present the findings and recommendations of the QAPP-Addendum to the Agency and other Town Officials at the Agency's request.

2.2 Other Services

Other engineering and environmental services in support of the Brownfields Program will be provided as requested by the Town. A specific task authorization that includes the scope of work, schedule, and cost will be provided to the Town to approve in writing prior to initiating other services.

ARTICLE 3 - RESPONSIBILITIES OF THE TOWN

The Town, without cost to the Engineer, will:

- 3.1 Place at the disposal of the Engineer all information in its possession pertinent to the Project including previous reports, existing topographic mapping of the project area in digital (AutoCAD) format, assessor's parcel mapping, and any other data relative to the Project.
- 3.2 Provide access to and make all provisions for the Engineer to enter upon public lands as required for the Engineer to perform his work under this Agreement.

ARTICLE 4 - PERIOD OF SERVICE

- 4.1 The Engineer shall proceed with the services under this Agreement promptly and will diligently and faithfully prosecute the work to completion in accordance with applicable engineering standards subject to any delays due to strikes, action of the elements, act of any government, civil disturbances, or any other cause beyond the reasonable control of the Engineer.



- 4.2 The Engineer understands that time is of the essence and will make every effort to expedite work tasks under the control of the Engineer. The schedule for completion of the services described in Articles 2.1 is four (4) weeks. Additional Task Schedules will be approved in writing with the corresponding scopes of services as described in Section 2.2.

ARTICLE 5 - PAYMENT TO THE ENGINEER

- 5.1 For the services performed, the Engineer shall be paid on a lump sum or hourly rate as outlined below and shown on Schedule 1, Fee Schedule, attached hereto.
- 5.2 Task 2.1 will be performed on a lump sum basis for a fee of \$4,000, said lump sum to be payable monthly on the basis of percent complete of each task as determined by the Engineer and approved by the Owner.
- 5.3 Task 2.2 services will be performed on an hourly rate basis as approved by the Town through a Task Authorization request submitted by the Engineer. Said services shall be payable monthly in accordance with the hourly rates presented in Schedule 1, attached hereto. These rates are subject to an annual cost of living adjustment effective January 1 of each year.
- 5.4 If Town fails to make any payment due the Engineer for services and expenses within sixty days after receipt of the Engineer's statement therefore, the amounts due the Engineer will be increased at the rate of 1% per month from said thirtieth day, and in addition, the Engineer may, after giving seven days written notice to the Town, suspend services under this agreement until the Engineer has been paid in full all amounts due for services, expenses and charges. The Town shall be responsible for the reasonable cost of collection.

ARTICLE 6 - GENERAL PROVISIONS

6.1 Absence of Warranty

All services of the Engineer and its independent professional associates, consultants and subcontractors will be performed in a reasonable and prudent manner in accordance with generally accepted Engineering practice. All estimates, recommendations, opinions and decisions of the Engineer will be on the basis of the information available to the Engineer and the Engineer's experience, technical qualifications, and professional judgment.

There are no warranties of merchantability or fitness for a particular purpose or any other warranties or guarantees whatsoever, express or implied, with respect to any service performed or materials provided under this Agreement.



6.2 Standard of Care

All services of the Consultant and its independent professional associates, consultants and subcontractors will be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. The Consultant makes no other warranties, express or implied, with respect to the services rendered hereunder.

6.3 Reuse of Documents

All documents, including Reports, Electronic Media, Drawings and Specifications, prepared or furnished by Engineer and its subsidiaries, independent professional associates, subconsultants and subcontractors pursuant to this Agreement are instruments of service in respect of a particular Project. However, absent project specific adaptation by Engineer, such documents are not intended or represented to be suitable for reuse by Town with respect to any future extensions of the Project or on any other projects.

Copies of documents that may be relied upon by Town are limited to printed copies (also known as hard copies) that are signed or sealed by Engineer. Files in electronic media format or text, data, graphic or other types that are furnished by Engineer to Town are only for convenience of Town. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Engineer makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Engineer at the beginning of this assignment.

Any reuse or disbursement of documents to third parties without written verification or project-specific adaptation by the Engineer will be at the Town's sole risk and without liability or legal exposure to Engineer or its subsidiaries, independent professional associates, subconsultants, and subcontractors. Any verification or project-specific adaptation by Engineer will entitle the Engineer to further compensation at rates to be agreed upon by Town and the Engineer. Accordingly, Town shall, to the fullest extent by law, defend, indemnify and hold harmless the Engineer from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from such unauthorized reuse or disbursement.

6.4 Opinions of Cost

Since the Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, the Engineer's opinions of probable Total Project Costs and Construction Cost are to be made on the basis of the Engineer's experience and qualifications and represent the Engineer's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but the Engineer cannot and does not guarantee that proposals, bids or actual



Total Project or Construction Costs will not vary from opinions of probable cost prepared by the Engineer. If prior to the Bidding or Negotiating phase the Town wishes greater assurance as to Total Project or Construction Costs, the Town shall employ an independent cost estimator.

6.5 Subsurface Investigations

In soil, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. While the Engineer will make reasonable effort to identify underground conditions, the inherent uncertainties in subsurface evaluations, changed, or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of Engineer.

6.6 Mediation

Prior to the initiation of any legal proceedings, the parties to this Agreement agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation.

Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a formal, written request to the other party to this Agreement. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under the laws of the State of Connecticut.

6.7 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, the Engineer will be paid for all services rendered to the date of termination, all reimbursable expenses and termination expenses.

6.8 Indemnification Related to Hazardous Waste

Except as provided in Section 6.9, it is not the intention of the Agreement that the Engineer be exposed to any hazardous waste liability arising out of Site contamination, the activities of others, including the Town, or the services performed by the Engineer. Except to the extent that such claims, demands, suits, judgments, expenses, attorney's fees, and losses relate to the Engineer's negligent acts, errors, or omissions; the Town shall indemnify, defend, and save the Engineer, its directors, officers, employees, and agents harmless from any and all claims, demands, suits, judgments, expenses, attorney's



fees, and losses arising out of or in connection with bodily injury (including death) to persons or damage to property which may arise from (i) the presence, origination or transport of hazardous substances, pollutants or contaminants at, on, to or from the site at which the services are being performed under this Agreement or at, on, from or to nearby properties, irrespective of whether such materials were generated or introduced before or after execution of this Agreement and irrespective of whether the Town was aware or directly involved in the generation or introduction of such materials or (ii) reliance by the Engineer on information provided to the Engineer on the location of underground tanks, or gas, water, oil, electrical or other lines, foundations, pumping stations or other subterranean structures, or (iii) any drilling, excavation, or similar activities undertaken hereunder at the direction of the Engineer.

The Engineer shall under no circumstances be considered the generator of any hazardous substances, pollutants or contaminants encountered or handled in the performance of the Engineer's services. Without contradiction of any assertion by the Town of third party liability and for purposes of this Agreement only, it is agreed that any hazardous materials, pollutants or contaminants generated or encountered in the performance of the Engineer's services shall be the responsibility of the site owner and shall be disposed of by the Town in accordance with all applicable laws and regulations

6.9 Limitation of Liability & Indemnification

The Consultant's liability to the Client for any loss or damage, including, but not limited to, special and consequential damages, arising out of or in connection with the accompanying Proposal or any related Agreement from any cause, including the Consultant's professional negligent errors or omissions, shall be limited to and in accordance with the insurance limits specified in Section 6.13.

The Town and Engineer each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorney's fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of the Town and Engineer they shall be borne by each party in proportion to its negligence.

6.10 Time Limit on Claims

All claims against Engineer, whether grounded in contract, tort, or otherwise, shall be brought in accordance with the applicable statutes of limitation relating to the services giving rise to the claim. No claim may be brought unless notice has been given as described below in Section 6.11.

6.11 Notice Requirements

If Town discovers a defect, fault, error, non-compliance or omission in Engineer's services, it shall give written notice to the Engineer within thirty days. Notice shall

include a detailed description of the nature of the defect, fault, error, non-compliance or omission.

6.12 Litigation and Additional Work

In the event the Engineer is to prepare for or appear in any litigation on behalf of the Town or is to make investigations or reports on matters not covered by this Agreement, or is to perform other services not included herein, additional compensation shall be paid the Engineer as is mutually agreed upon in writing.

6.13 Insurance

At all times during the performance of work under this Project, Engineer shall maintain at its sole cost and expense, (a) worker's compensation, occupational, disability benefit and similar employee benefit insurance for each of its employees in the amounts required under the law in the state where the Work is performed; (b) employees liability insurance coverage in the amount of not less than \$500,000; (c) commercial general liability coverage, including products and completed operations, and broad form contractual liability, written on an occurrence form with a minimum combined single limit of \$2,000,000 per occurrence for personal injury, including death, and property damage; (d) commercial automobile liability insurance, including non-owned automobiles, with a minimum combined single limit of \$1,000,000 per occurrence; and (e) professional liability insurance including pollution coverage on a claims made basis with an aggregate limit of \$5,000,000 and a per occurrence limit of \$3,000,000. Engineer shall furnish to Town certificates of insurance showing such coverages prior to commencing performance of work under the Project. The Engineer shall name the Town as additional insured on the Engineer's commercial general liability and commercial automobile policies, and such policies shall be reasonably acceptable to Town. With respect to Engineer's negligence, this coverage shall be primary and non-contributory with any insurance coverage Town may have. In the event that Engineer receives notice of cancellation of any coverage described herein. The Engineer shall be responsible for ensuring that all of its subcontractors carry insurance of similar types and with similar limits of coverage as required for the Engineer.

6.14 Sales Tax Exemption Certificate

Client must provide the Consultant an exemption certificate within fifteen (15) days after the effective date of this Agreement for any exemptions claimed by the Client from the sales tax for any services performed or for any tangible personal property purchased under this Agreement. In the event that the Client fails to timely provide the Consultant with such an exemption certificate within such time, the Client shall be solely responsible for obtaining a refund for any and all sales tax collected or paid by the Consultant in connection with the performance of this Agreement before the Client provides the Consultant with such exemption certificate, including any sales tax paid by the Consultant to subcontractors, engineers, suppliers or any other individual entity.

6.15 Controlling Law

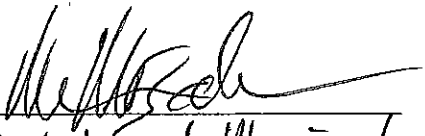
This Agreement is to be governed by the laws of the State of Connecticut.

6.16 Affirmative Action - Equal Opportunity

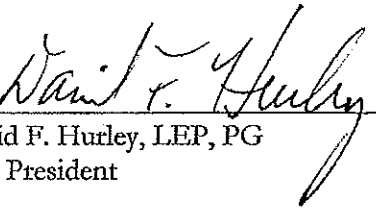
The Engineer agrees that in the performance of this Agreement it will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, sex, mental retardation or physical disability, and further agrees to provide the Town with such information requested concerning the employment practices and procedures of the Engineer. The Engineer shall have an active affirmative action program.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written.

Town of East Hampton, Connecticut

By: 
Name Michael Maniscalco
Title Town Manager
Date: 6/9/14

Fuss & O'Neill, Inc.

By: 
David F. Hurley, LEP, PG
Vice President
Date: June 9, 2014



FUSS & O'NEILL

2014 BILLING RATES

BILLING CATEGORY

HOURLY RATE

Researcher, Clerical	\$ 62
CADD, Survey, Technician I	\$ 76
CADD, Survey, Technician II	\$ 80
CADD, Survey, Technician III	\$ 91
Engineer, Scientist, Analyst I	\$ 95
Engineer, Scientist, Analyst II	\$ 101
Engineer, Scientist, Analyst III	\$ 119
Senior Engineer, Scientist, Analyst I	\$ 136
Senior Engineer, Scientist, Analyst II	\$ 150
Senior Engineer, Scientist, Analyst III	\$ 167
Associate	\$ 175
Officer	\$ 185

DIRECT CHARGE SCHEDULE

Subcontractors/Subconsultants	Cost plus 5%
F&O Staff Mileage	At Prevailing IRS Rate
F&O Field Vehicles	\$100/day plus \$.35/mile
Geoprobe Box Truck	\$.85/mile
F&O Hybrid Vehicles	At Prevailing IRS Rate
Printing/Reprographics	
Black & White Copy/Print	\$0.065/page
Color Copy/Print	\$0.40/page
Electrostatic Copy/Print	\$0.20/Sq. ft.
Inkjet Plotter	\$0.25/Sq. ft.
Inkjet Mylar	\$2.50/Sq. ft.
Binding Materials	At Cost

2014 BILLING RATES

FIELD EQUIPMENT SCHEDULE	PER DAY (unless noted)
Air Sampling Pumps	\$15
All Terrain Vehicle	\$100
Bladder Pumps	\$25
Boat	\$50
Combustible Gas Indicator (CGI)	\$20
Concrete Coring Machine	\$250
Dissolved Oxygen/Temp/pH Meter	\$15
Generators	\$50
Geoprobe Sampling Rig	\$600(a)(b)
Ground-Penetrating Radar	\$250(a)
Survey GPS Submeter Receiver	\$30 per hr
Hammer Drill	\$50
Hand Auger	\$25
Interface Probe	\$25
Low Flow Controller	\$50
Metal Detector	\$25
Multimeters	\$85
Confined Space Meter (Multi-Gas Meter)	\$30
Peristaltic Pumps	\$20
Petro Flag Sample	\$25
Photoionization Detector (OVM/PID)	\$75
Soil Gas Sampling Equipment	\$100
Soil/Sediment VOC Supplies (Terra Core)	\$2 per sample
Soil/Sediment SPLP/TCLP Supplies (Encore)	\$ 10 per sample
Soil Vapor Extraction (SVE) Pilot Test Equipment	\$260
Survey Levels	\$20
Total Organic Vapor Analyzer	\$65
Transit Time Flowmeter	\$130 per day, \$520 per week, \$1,706 per month
Turbidity Meters	\$15
Water Level Indicator	\$15

(a) Plus expendables and standard hourly rate for operator.

(b) CT State sales tax may apply